

General Information Letter: Corporation that fails to file a return forfeits any overpayment of taxes for that year, and the Department has no obligation to detect failure and notify the taxpayer in time to file a return claiming a refund or credit for the overpayment.

November 19, 1999

Dear:

This is in response to your letter dated October 21, 1999 in which you state the following:

We are the accountants for the above named taxpayer and they have asked us to write you to help them resolve a most unfortunate matter. Attached please find a copy of a letter dated September 28, 1999 from the Illinois Department Of Revenue. This letter will give you the required background information necessary in understanding the issue at hand. After receiving the attached letter, I spoke with Mr. Tuttle whom said there was nothing he could do. He suggested I write to you.

At issue is the disallowance of an overpayment from the 1994 IL-1120 due to the fact that it was filed more than three years late. In reviewing our files, it was found that this overpayment arose in 1989 and has been carried forward ever since.

We ask that you give this case special consideration based on the following:

- 1) Our client has paid for professional tax preparation since its inception. Does it make sense that the taxpayer would pay for such service and not file the return?
- 2) If the return was not filed or lost in the mail, why didn't the taxpayer receive any notices that the 1994 return had not been received prior to the Statue of Limitations running out?
- 3) When the 1995 and 1996 returns were filed, why didn't the taxpayer receive a notice that there wasn't any credit available from the prior years?
- 4) The Federal and State government exchange tax information. The Taxpayer has never received a notice from the Federal government stating that a return was never filed. Therefore it is safe to assume that Federal return was received. If the State was aware a Federal return was filed why didn't the taxpayer get notified (on a timely basis) that the State return was not received?

In all my approximately twenty-five years of public accounting service I can honestly say I have never seen anything quite like this before. Normally, it has been my experience that the Illinois Department of Revenue sends out its notices in a timely manner. Please review the above in order to reinstate the cooperation in this matter. If I may be of further assistance to you in clearing up this most unfortunate matter, please do not hesitate to call.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Adm.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The fourth question listed in your letter seems to address the first question: the professional tax preparer was paid for the work done on the federal income tax return. However, we cannot assume that because a federal return was filed that an Illinois tax return was filed. The fact remains that there was no 1994 return filed on behalf of your client, xxxxxxxxxxxxxxxxxxxxxxx.

The answer to your second question is that, unfortunately, there are too many non-filed returns so that the Department cannot possibly give notice to each and every taxpayer that does not file a return. This leads us to the answer for your third question: the Department is unable to notify each taxpayer of the credits available from prior years, especially when not all prior year returns are filed.

Regarding the fourth and final question, the federal government does not alert the Department of taxpayers who file, but only those taxpayers that they catch who have not filed a federal return. We do understand your frustration, but we are unable to assist you due to the three-year statute of limitations in Section 911 of the Illinois Income Tax Act. (35 ILCS 5/911).

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax